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## **TABLE OF AUTHORITIES**

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## **ARGUMENT**

Because Ms. Greenlee believes that her brief effectively deals with the issues that this Court is called upon to decide, her reply to the Respondent's Reply Brief will be brief.

Respondent claims that the Labor and Industrial Relations Commission(LIRC) correctly held that the Claimant failed to meet her burden of proof that the death of her husband was medically causally related to her husband's work accident of July 24, 1989.(Respondent's Brief p.20). In support of this position the Respondent and, apparently, the LIRC relied on the testimony of Dr. Wayne Stillings who suggested that Mr. Greenlee's suicide occurred as a result of an alcohol problem that he had and marital problems that he had **prior** to the date that he suffered his work related injuries on July 24, 1989.

The problem with this position is that the LIRC, when it issued its Final Award granting Mr. Greenlee permanent total disability benefits on September 13, 1995 and then reissued its Award on January 9, 1996, determined that, "The uncontradicted testimony showed that before the fall, Mr. Greenlee was in good health. After the accident and surgery he was depressed, **suicidal**, had difficulty concentrating, difficulty sleeping, treated people differently, had memory loss...had recurring headaches and seizures, was sullen, moody, withdrawn and not interested in social activity. He was reclusive and abusive to his children to the point that it caused separation of his marriage. **Employer provided no evidence to contradict this.**"(Tr.34,35)(Emphasis added). The LIRC and the appellate court, when it affirmed the LIRC's Final Award, **did not** rule that Mr. Greenlee became suicidal because of a prior history of alcohol use. It **did not** rule that Mr. Greenlee became suicidal because of some prior marital difficulties. It **did** rule, unequivocally, that Mr. Greenlee became suicidal as a result of his work related

injuries. Therefore, when Mr. Greenlee actually took his own life, he did so on account of the work related injuries he received and not because of any perceived pre-accident history of alcohol use or marital problems as suggested by Dr. Stillings.

The final point that Mrs. Greenlee would like to address has to do with the constitutionality of 287.120.3 RSMo., the suicide exclusion clause. For the reasons stated in her brief, Mrs. Greenlee contends that 287.120.3, in so far as it is applied to the facts of her case, is unconstitutional, because there is no rational basis nor is there a legitimate state purpose for its application. The Respondent states that, “The Legislature has a very legitimate and rational basis in not allowing claimants to profit from their own intentional self-inflicted injuries.”(Respondent’s Brief p. 40). The problem with Respondent’s argument is quite apparent. First, there is simply no evidence that by killing himself Mr. Greenlee profited from anything. There is no evidence that he was aware of the complexity of the law governing worker’s compensation benefits; there was no evidence to suggest that Mr. Greenlee killed himself in an attempt to enrich his wife and children, and there was no evidence to suggest that Mr. Greenlee even knew that under certain circumstances a spouse could receive death benefits arising out of the work related death of the other spouse. Contrast this with Missouri’s public policy as expressed in Article I section 30 of the Missouri Constitution and as expressed in 376.620 RSMo..In Missouri, suicide will not affect the inheritance rights of a suicide victim’s family, and, that as long as an insured did not contemplate suicide at the time he made application for a life insurance policy his beneficiaries will be paid even though he decides to commit suicide at a later date even with the expressed purpose of enriching his designated beneficiaries..

The Respondent goes on to say that, “Although claimant argues to the contrary, clearly the

Legislature intended to place the cost for those intentional self-inflicted injuries on the person who committed the intentional act, the claimant himself.”(Respondent’s Brief p. 40). Even if Respondent’s contention is correct in the abstract it fails in its application. In this case, application of 287.120.3 RSMo. affects not the person who committed suicide, Dennis Greenlee, but his family. Under no circumstances could the legislature have intended that death benefits would be denied to the wife and family of a man who committed suicide as a direct and proximate result of work related injuries. The *raison d’etre* for the Worker’s Compensation Act is to provide compensation benefits to injured workers, and in the case of their death, death benefits to their dependents. What legitimate state purpose can possibly be served by denying death benefits to Dennis’ wife and children in a case where it has already been judicially determined that Dennis became suicidal as a result of work related injuries that he suffered? None.

### **CONCLUSION**

For the reasons stated above, Mrs. Greenlee and her children pray that this Court reverse the Order of the Commission and find that Dennis Greenlee’s death was work related and that they are entitled to receive from the Respondent death benefits in the sum of \$220.00 per week retroactive to May 20th 1995, the date of Mr. Greenlee's death, up to and including the date of this Court’s judgment, with interest. Mrs. Greenlee further prays that the Respondent be ordered to pay to Mrs.

Greenlee and her children the sum of \$220.00 per week until Mrs. Greenlee remarries in accordance with the terms and provisions set forth under 287.240 RSMo. and that her attorneys be entitled to receive an attorney's fee in the sum of 25% of all sums paid to Mrs. Greenlee, past and future. In the Alternative Mrs Greenlee prays that this Court enter its Order finding that the 300 week rule and the suicide exclusion clause of the Law either do not apply or are unconstitutional and that this case be remanded to the Commission with instructions that it remand Mrs. Greenlee's claim for death benefits to Judge Vacca or Judge Scwendemann so that he or she can make an award subject to further review by the Commission and this Court. Finally, Mrs. Greenlee prays that this Court enter such other and further orders that it deems just.

Respectfully Submitted,

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Kenneth A. Leeds #30885

I, Kenneth Leeds, certify that on the \_\_\_\_ day of November 2001, I mailed a copy of this document to John Ottenad, 720 Olive Street, Suite 1720, St. Louis, Missouri 63101, by depositing same before 5:00 pm with the United States Post Office.

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### **Certificate of Compliance**

I, Kenneth A. Leeds, certify:

1. That this Reply Brief complies with the word count limitations set forth in Supreme Court Rule 84.06.
2. That the number of words in this Reply Brief is 1,197.
3. That the floppy disc that is being filed with this Reply Brief has been scanned for viruses and is virus free.

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